

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
ENVIRONMENTAL APPEALS BOARD

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IN THE MATTER OF: ) Appeal No. 08-03  
Rocky Well Service, Inc., and )  
Edward J. Klockenkemper, Respondents. ) Docket No. SDWA-05-2001-0002

**RESPONDENT EDWARD J. KLOCKENKEMPER’S REPLY TO EPA RESPONSE TO  
MOTION FOR ORAL ARGUMENT**

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Now Comes Respondent E.J. Klockenkemper (“EJK”), by and through undersigned counsel and submits this Reply to EPA’s May 1, 2009, Response to EJK’s Motion for Oral Argument, and Respondent states in reply as follows.

1. EPA’s claims that oral argument is unneeded since the issues in this matter have allegedly been “thoroughly presented...in hundreds of pages of briefs, pleadings and evidence...”, in fact cuts against EPA’s opposition, since the voluminous record and multiplicity of facts, and interacting state and federal laws and regulations, supports oral argument to allow counsel to pick out the primary issues and answer any questions the EAB may have. *EPA Response at 2.*
2. EPA’s related attempts to infer that this matter is not “genuinely complicated” are also belied by the lengthy record in this matter and the “novel” highly convoluted direct (court-created) liability theory and scheme EPA asks the EAB to adopt and impose. *Id.*
3. EPA’s admission that there are “hundreds” of pages of briefs below also indicates, contrary to EPA’s assertions, the prejudice that the EAB’s 70 page limit on EJK’s Revised Brief (and the much lower page limit on RWS’s Brief) has caused, which might, arguably, be partially alleviated by allowing Respondents to highlight those points that were made by reference to the record below (without extended discussion) in their Revised Briefs.(especially regarding penalty).<sup>1</sup> *EPA Response at 2-3.*
4. With regard to EPA’s request to “strictly limit” any oral argument to [unspecified

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<sup>1</sup>Indeed, EPA’s 7/26/06 Memorandum in Support of its Motion for Partial Accelerated Decision, alone, was 63 pages, and its Reply 20 pages, thus EPA’s briefing of its Motion on liability of 83 pages was equivalent to the *total* of that allowed for both of Respondents’ Revised Briefs on appeal, combined.

matters], Respondent disagrees that it is necessary nor is it appropriate for the EAB to dictate how or to what part of the appeal the parties utilize or direct the time for argument allotted to each. *EPA Response at 4.*

5. With regard to the use of a litigant's or a citizen's use of a public agencies' publicly funded facilities, such as, arguably, the EPA Region 5 teleconferencing facilities (especially where they appear to have been intended to function at least in part in a quasi-judicial manner at times), Respondents were merely attempting to suggest a method that might save all parties the expense of a trip to Washington but yet have them in the same room for a non-evidentiary presentation, in a nod to the current economic crises.<sup>2</sup> *EPA Response at 5-6.*
6. Further, Respondents have found nothing in the EPA regulations or policies that prohibit the suggested public use of these supposedly publicly-funded teleconferencing facilities (just as there is no bar on or charge for parties meeting with EPA officials in EPA conference rooms) or which might prescribe a fee for such use, which fees or expenses Respondents in fairness would consider sharing/splitting with EPA, be it at EPA or another facility here in Chicago.
7. In the event the EAB allows oral argument, Respondents of course could appear in person before the EAB should it be determined that the Region was doing so, and as circumstances dictate.
8. WHEREFORE, the EAB should allow oral argument as requested.

**Submitted By:** [s:/Felipe N. Gomez](#) **Date:** 5/14/09  
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<sup>2</sup>Admittedly, the expense of traveling and lodging is far easier for EPA to absorb since it is public funds being expended, and the desire to travel to DC is understandable considering the staff experience to be arguably gained.

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on this date, I e-filed an e-signed copy of the original, and mailed the signed original of this Reply by U.S. Mail - Overnight Express to the EPA Environmental Appeals Board Clerk, 1341 G Street, N.W., Suite 600, Washington, D.C., 20005 and facsimiled and mailed a copy to 1) Mr. Richard Day, Esq., 413 North Main Street, St. Elmo, IL. 62458. I also certify that on this day I facsimiled a copy of this **Reply** to: 2) EPA Counsel Ms. Cynthia Kawakami; and 3) EPA Counsel Ms. Mary McAuliffe, both at Office of Regional Counsel (C-14J), 77 W. Jackson, Chicago, IL. 60604-3590 (Fx: 312-886-0747), and on same day I mailed U.S. First Class mail, a copy of this **Reply** to each of Ms. Kawakami and Ms. McAuliffe at the address listed above.

Signed: \_\_\_\_\_ *s:/Felipe N. Gomez* Date: May 14, 2009

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